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ABSTRACT

Designed for middle school through high school students, this unit contains eight lesson plans that focus on Maine state law. The state lessons correspond to lessons in the volume, "Antidote: Civic Responsibility. Drug Avoidance Lessons for Middle School & High School Students." Developed to be presented by educators, law student, or attorneys, the state lessons are interactive and sequential, although individual lessons can stand alone. The document includes legal information about driving while intoxicated, drug offenses, sentencing, and drug and alcohol statutes written specifically to combat juvenile abuse. (RJC)

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ED 382 529

Antidote: Civic Responsibility

Maine Law

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Lesson 1

1. Has Aimee violated any state laws? Have her parents?

Aimee has violated no Maine law as there is no law which makes a minor liable for an unintentionally dangerous act toward another minor.

Aimee and Carrie's parents however, might be in violation of Maine law. One can be held guilty of endangering the welfare of a child if s/he "recklessly endangers the health, safety or welfare of a child under 16 years of age by violating a duty of care or protection." Me. Rev. Stat. Ann. tit. 17A, §554 (Supp. 1992). Aimee and Carrie's parents have a duty to protect them. This duty might be violated by leaving a 3 year old under the exclusive care of a 10 year old depending how frequently it happened and for how long Aimee was in charge.

2. Does state law allow 17 year old Tyrell to drink a glass of wine with his dinner without his parents' consent?

Maine law prohibits minors, persons under 21, from consuming alcohol unless s/he is in her/his own home in the presence of a parent. legal guardian or custodian. Me. Rev. Stat. Ann. tit. 28A, §§2 & 2051 (1988). Thus, if Tyrell is in his home and his parents are present, he might be allowed to consume the wine despite not having their express permission to do so.

3. Is Maria violating any law when she tells her roommates whom to call to buy marijuana?

Yes. Me. Rev. Stat. Ann. tit. 17A, §1106 prohibits individuals from knowingly or intentionally furnishing scheduled drugs and from knowingly and intentionally possessing scheduled drugs. Maria furnished drugs to her roommates by assisting them acquire marijuana. She provided critical information to their illegal activity. Absent her information they would not have attained possession. Maria could consequently be charged with conspiracy under Me. Rev. Stat. Ann. tit. 17A, §154(1) (1983). In Maine, "A person is guilty of conspiracy if, with intent that conduct be performed which, in fact, would constitute a crime or crimes, he agrees with one or more others to engage in or cause the performance of such conduct." Maria agreed with her roommates to help them gain possession of marijuana, thus, conspiring to commit a crime.

4. Have Adam and Alex broken any laws other than those against drinking and fighting?

Yes. Manslaughter is defined as causing the death of another human being by recklessness or criminal negligence. Me. Rev. Stat. Ann. tit. 17A, §203. Arguably, the death of Jim was

caused by criminal negligence since the boys were involved in an unlawful act, fighting, at the time of Joe's death. The twins could also be charged with assault. "A person is guilty of assault if he intentionally, knowingly, or recklessly causes bodily injury or offensive physical contact to another. Me. Rev. Stat. Ann. tit. 17A, §207 (1983).

5. **Has Jose violated any state law even though he is not drinking? Has Carlos or TJ violated any state law?**

Yes. Jose, age 17, although he is not drinking, is violating a Maine law prohibiting minors from knowingly transporting liquor in a vehicle under his control. Me. Rev. Stat. Ann. tit. 17A, §2052 (1988). Jose's license will be suspended for this violation. Me. Rev. Stat. Ann. tit. 17A, §2053 (1988).

TJ, age 18, is violating the law prohibiting consumption and possession of alcohol by minors. Me. Rev. Stat. Ann. tit. 17A, §2051 (1988).

Carlos is violating the law if he gave alcohol to TJ or allowed TJ to consume it. Me. Rev. Stat. Ann. tit 17A, §2081 (1988).

6. **Is Dr. Melrose violating any state or federal law by prescribing pain killers without conducting an examination or determining need?**

Dr. Melrose is violating not only state law, but federal law too. Under 21 U.S.C.A. § 829, a physician must have a legitimate medical purpose for dispensing drugs, and the act of dispensing or prescribing drugs should be within the usual course of professional conduct. U.S. v. Varma, 691 F.2d 460 (1982), U.S. v. Jamieson, 605 F. Supp. 119 (1985).

Dr. Melrose's patients, if they do not provide him with a bona fide reason for needing the painkillers, may also be breaking the law. 21 U.S.C.A. § 843 prohibits knowingly or unknowingly acquiring possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge.

Further, he is in violation of Maine law which prohibits a person from unlawfully furnishing scheduled drugs. Me. Rev. Stat. Ann. tit. 17A, §1106 (Supp. 1992). Dr. Melrose may legally dispense controlled substances, in good faith, as part of a medical care. By giving prescriptions without examinations, upon the request of the patient, he is in violation of the law.

7. **Is Danielle violating any law by taking only one or two pills from someone else's prescription?**

Danielle is violating several state and federal laws. Since she is in effect dispensing prescription drugs to herself, she is violating 21 U.S.C.A. § 829, which prohibits dispensing any

controlled substance which is a prescription drug without the written prescription of a practitioner. She is also violating 21 U.S.C.A. § 843, which prohibits knowingly or unknowingly acquiring possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge and 21 U.S.C.A. § 844 which prohibits simple possession of a controlled substance unless such a substance was obtained by a prescription. The seriousness of her crime under federal drug control laws will depend on the type of drug which she is taking and how the drugs are used.

Maine law prohibits Danielle from unlawfully possessing scheduled drugs. Me. Rev. Stat. Ann. tit. 17A, §1107 (1992). Since she did not possess the drugs pursuant to a lawful prescription or any lawful purpose, she is in violation of the law for taking the pills from the prescriptions of others. Further, Danielle is violating Me. Rev. Stat. tit. 17A, §1109 (1988) which prohibits a person from stealing scheduled drugs. Additionally, Danielle has also committed theft by unauthorized taking or transfer. One is guilty of theft if she obtains or exercises unauthorized control over the property of another with intent to deprive him of thereof. Me. Rev. Stat. Ann. tit. 17A, §353 (1992). Clearly Danielle's removal of pills from prescriptions prior to her delivering them is in violation of this section since she told no one and had no plans to return them.

8. **Is Renee breaking any law even though she is not selling drugs herself?**

Even thought she is not selling drugs directly, Renee is violating several state and federal laws. She is violating 21 U.S.C.A. §841 prohibiting possession of a controlled substance with the intent to manufacture, distribute or dispense drugs and 21 U.S.C.A. §844 prohibiting simple possession of a controlled substance.

Renee could receive an increased sentence in accordance with the federal sentencing guidelines as a result of her using children in her scheme. Under 21 U.S.C.A. § 859, the distribution of a controlled substance to a person under 21 year of age is subject to increased penalties. The United States expressed its concern with the importance of protecting children from drug trafficking under 21 U.S.C.A. § 860, which imposes heavier prison sentences in cases involving the distribution or manufacture of controlled substances in the proximity of schools, playgrounds or youth centers. 18 U.S.C.A. App. 4 § 3B1.3 also provides for increased sentences in cases of abuse of one's position of trust, as in a drug trafficking defendant involving her daughter in the drug trade. U.S. v. Ledesma, 979 F.2d 816 (1992).

Renee is in violation of Me. Rev. Stat. Ann. tit. 17A, §1103 (Supp. 1992) for trafficking (selling, bartering, trading, exchanging or otherwise furnishing for consideration)

scheduled drugs. Renee will further be charged with aggravated trafficking for enlisting or soliciting the aid of a child, Mary, under 18. Me. Rev. Stat. Ann. tit. 17A, §1105. This makes her crime one class more serious than it would otherwise be. On or within 1000 feet of a school or school bus would add to her charge to make it aggravated too. Id.

9. Did Jim violate any law other than those regarding controlled substances?

Their heroin use is a felony under federal drug-control statutes. 21 U.S.C.A. § 841 prohibits possession of a controlled substance with the intent to manufacture, distribute or dispense such substance. 21 U.S.C.A. § 844 prohibits simple possession of a controlled substance.

Jim transmitted the HIV virus to Andre through the shared needle. Maine has not yet dealt with this issue. Under the Model Penal Code, however, Jim's behavior could constitute simple or aggravated assault or the attempt thereof, or reckless endangerment; under certain extreme situations, it could be construed as murder. See Gene Schultz, AIDS: Public Health and the Criminal Law, 7 St. Louis U. Pub. L. Rev. 65 (1988); Roger N. Braden, AIDS: Dealing With the Plague, 19 N. Ky. L. Rev. 277 (1992). In some cases, it has been suggested that the HIV virus provides a deadly weapon. Cf. Brock v. State, 555 So.2d 285 (Ala. Crim. App. 1989). Current Maine law does make it illegal, however, for one to knowingly furnish or possess hypodermic apparatuses. Me. Rev. Stat. Ann. tit. 17A, §1111A (Supp. 1992).

10. Has the bartender or owner of Bulldog's Bar & Grill violated any law?

Yes. Maine law prohibits service of alcohol to a visibly intoxicated individual. Negligent service is barred under Me. Rev. Stat. Ann. tit. 28A, §2506(2) (1992). The negligent server is liable for damages proximately caused by that individual's consumption of the liquor. Id. Reckless service is actionable under Me. Rev. Stat. Ann. tit. 28A, §2507. Again, the reckless server is liable for damages proximately caused by that individual's consumption of the liquor. Suit may be brought against any server who is a licensee, an employee of the licensee or the agent of the licensee. Me. Rev. Stat. Ann. tit. 28A, §2705 (1992). Suit may be brought by any person who suffers damage except the intoxicated individual if s/he was at least 18 when served, the estate of the intoxicated individual if s/he was at least 18 when served and any person asserting claims arising out of personal injury or death of the intoxicated individual if the intoxicated individual was at least 18 when served. Me. Rev. Stat. Ann. tit. 28A, §2704(1992).

Lesson 2

CRIMINAL JUSTICE STATISTICS: DRUG AND ALCOHOL RELATED OFFENSES

UNIFORM CRIME REPORT DATA OF 1990--CRIME IN THE UNITED STATES

According to the Uniform Crime Report of 1990, 68% of the drug abuse violators were arrested for possession of heroin, cocaine or a narcotic derivative. A little over 31% of drug arrests were for the sale and manufacture of drugs.

Out of the 14,195,100 total number of arrests that occurred in 1990, drug abuse violations accounted for 1,089,500, driving under the influence comprised 1,810,800, and liquor law violations represented 714,700 of the total.

1981-1990 Ten Year Trend

Arrests for Drug Abuse Violations

In 1981, the total number of arrests for drug abusers under the age of 18 was 69,383. On the other hand in 1990, the total number was 50,435. This represents a 27.3% **decrease** in the number of arrests for persons under the age of 18. However, the number of arrests for persons over the age of 18 represent an 89.9% **increase** from 332,733 in 1981 to 631,932 in 1990.

Liquor Law Violations

For persons over the age of 18, the number of arrests for liquor law violations have dramatically **increased** to 61% from 218,079 in 1981 to 351,064 in 1990. However, the number of arrests for persons under the age of 18 has decreased to less than 0.4%.

♦ ♦ ♦

Criminal Victimization in the United States, 1990 A National Crime Victimization Survey Report, February, 1992

Percent Distribution of Victimizations by Perceived Drug or Alcohol Use by Offender:

- Of the **130,260** total rapes reported by victims to police, **49.8%** were believed to be committed by someone under the influence of drugs or alcohol.
- Of a total of **1,149,710** reported robberies, **24.2%** involved an offender under the influence of drugs or alcohol.
- Of **1,600,760** aggravated assaults committed **40%** were committed by people under the influence of drugs.
- Of the **3,128,130** simple assaults reported, **32.9%** were perpetrated by someone perceived to be under the influence of drugs or alcohol.

Lesson 4

FEDERAL SCHEDULE (answers to handout 3)

DRUG	SCHEDULE
heroin	schedule 1
beer	not a scheduled drug
vodka	not a scheduled drug
nitrate	not a scheduled drug
amphetamines	schedule 3
caffeine	not a scheduled drug
marijuana	schedule 1
crack	schedule 2
scotch	not a scheduled drug
MSG	not a scheduled drug
cocaine	schedule 2
glue	not a scheduled drug

FEDERAL PENALTIES BY SCHEDULE FOR POSSESSION

SCHEDULE	MAX. PRISON	MAX. FINE	MAX. TOTAL
schedule 1	15 years	$25,000	15yrs + $25,000
schedule 2	15 years	$25,000	15yrs + $25,000
schedule 3	5 years	$15,000	5yrs + $15,000
schedule 4	3 years	$10,000	3yrs + $10,000
schedule 5	1 year	$ 5,000	1yr + $ 5,000
unscheduled drug	n/a	n/a	n/a

The penalty doubles if the defendant has a previous conviction for a schedule law violation.

In order for a drug to be a narcotic, it must be a derivative of opium. All narcotics contain opium or opium derivatives, ie: heroin.

Malt beverages such as beer are not included in the scheduling process. They are controlled by liquor laws.

Information from 21 U.S.C.A. § 841 (West 1981).

States	Heroin	Cocaine	Crack	Marijuana	Amphetamine
Alabama	sch 1	sch 2	sch 2	sch 1	sch 3
Alaska	sch 1A	sch 2A	sch 2A	sch 3A	sch 4A
Arizona	sch 1	sch 2	sch 2	sch 1	sch 2
Arkansas	sch 1	sch 2	sch 2	sch 1	not listed
California	sch 1	sch 2	sch 2	sch 1	sch 2
Colorado	sch 1	sch 2	sch 2	sch 1	sch 2
Connecticut	sch 1	sch 2	sch 2	sch 1	sch 3
Delaware	sch 1	sch 2	sch 2	sch 1	sch 2
D.C.	sch 1	sch 2	sch 2	sch 2	sch 2
Florida	sch 1	sch 2	sch 2	sch 1	sch 2
Georgia	sch 1	sch 2	sch 2	sch 1[1]	sch 2
Hawaii	sch 1	sch 2	sch 2	sch 1	sch 2
Idaho	sch 1	sch 2	sch 2	sch 1	sch 2
Illinois	sch 1	sch 2	sch 2	listed under its act: the Cannabis Control Act, 56 1/2 §701 et seq	sch 2
Indiana	sch 1	sch 2	sch 2	sch 1	sch 2
Iowa	sch 1	sch 2	sch 2	sch 1	sch 2
Kansas	sch 1	sch 2	sch 2	sch 1	sch 1
Kentucky	sch 1	sch 2	sch 2	sch 1	sch 2
Louisiana	sch 1	sch 2	sch 2	sch 1	sch 2
Maine[2]	sch W	sch W	sch W	sch W & Z	sch W
Maryland	sch 1	sch 2	sch 2	sch 1	sch 1
Massachusetts[3]	class A	class B	class B	class D	class B
Michigan	sch 1	sch 2	sch 2	sch 1	sch 2
Minnesota	sch 1	sch 2	sch 2	sch 1	sch 2
Mississippi	sch 1	sch 2	sch 2	sch 1	sch 2
Missouri	sch 1	sch 2	sch 2	sch 1	sch 2
Montana	sch 1	sch 2	sch 2	sch 1	sch 2

[1] Must have more than 15% THC (tetrahydrocannobinol), the chemical in the cannabis plant.

[2] Maine schedules its drugs under an alphabetical category: W, X, Y & Z. The schedules are similar to other state categorizations.

[3] Massachusetts calls their schedules classes, but they are the same thing.

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States	Heroin	Cocaine	Crack	Marijuana	Amphetamine
Nebraska	sch 1	sch 2	sch 2	sch 1	sch 2
Nevada[4]	sch 1	sch 2	sch 2	sch 1	sch 3
New Hampshire	sch 1	sch 2	sch 2	sch 1	sch 3
New Jersey	sch 1	sch 2	sch 2	sch 1	sch 3
New Mexico	sch 1	sch 2	sch 2	sch 1 & 2	sch 2
New York	sch 1	sch 2	sch 2	sch 1	sch 2
North Carolina	sch 1	sch 2	sch 2	NC has a sixth schedule which incl. marijuana	sch 2
North Dakota	sch 1	sch 2	sch 2	sch 1	sch 2
Ohio	sch 1	sch 2	sch 2	sch 1	sch 2
Oklahoma	sch 1	sch 2	sch 2	sch 1	sch 2
Pennsylvania	sch 1	sch 2	sch 2	sch 1	sch 2
Puerto Rico	sch 1	sch 2	sch 2	sch 1	sch 3
Rhode Island	sch 1	sch 2	sch 2	sch 1	sch 2
South Carolina	sch 1	sch 2	sch 2	sch 1	sch 2
South Dakota	sch 1	sch 2	sch 2	sch 1	sch 2
Tennessee	sch 1	sch 2	sch 2	sch 2, but only for certified patients under the Controlled Substances Therapeutic Research Act	sch 2
Texas	sch 1	sch 2	sch 2	sch 1	sch 2
Utah	sch 1	sch 2	sch 2	sch 1	sch 2
Vermont	sch 1	sch 2	sch 2	sch 1	sch 3
Virginia	sch 1	sch 2	sch 2	not listed, but liquid marijuana or hashish oil is listed as sch 1	sch 2
Washington	sch 1	sch 2	sch 2	sch 1	sch 2
West Virginia	sch 1	sch 2	sch 2	sch 1	sch 2
Wisconsin	sch 1	sch 2	sch 2	sch 1	sch 2

[4] While Nevada does not specifically name drugs under its five schedules, but instead lists the specific tests to determine under which schedule a drug belongs § 453.2182 says that the state will use 21 USC as a guide for scheduling. The state merely reserves the right to reschedule any controlled substance as it sees fit according to the tests set out in 453.166, et. seq.

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States	Heroin	Cocaine	Crack	Marijuana	Amphetamine
Wyoming	sch 1	sch 2	sch 2	sch 1	sch 2

OFFENSE/SUBSTANCE	SENTENCE
First Offense: Cocaine - Possession With Intent To Distribute - 5 kg	• imprisonment for up to 10 years, and • fine not to exceed $40,000
First Offense: Trace of Heroin - Possession of 1 kg or more of a mixture with a small, but detectable amount of heroin	• imprisonment for up to 5 years, and • fine not to exceed $20,000
First Offense: Codeine - Possession - 200 mg	• imprisonment for up to 1 years, and • fine not to exceed $10,000
Second Offense: Marijuana - Possession - 50 kg	• imprisonment for up to 10 years, and • fine not to exceed $40,000
Third Offense - Methamphetamine - Possession - 100 g	• imprisonment for up to 10 years, and • fine not to exceed $40,000

Cite: 17 AM R.S. §1103.

Current Federal Penalties:

Group 1 and Group 2: . . . person shall be sentenced to prison which may not be less than 10 years or more than life and a fine not to exceed 4 million dollars.

Group 3: . . . person shall be sentenced to a term of imprisonment of not more than one year, a fine not exceed $250,000 in the case of an individual.

Group 4: . . . person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed $500,000.

Group 5: . . . person shall be sentenced mandatory life imprisonment without release and fine not to exceed $8 million.

Cite: 21 U.S.C. § 841 (1992).

Lesson 6 & 7

1. **What does DWI stand for?**

Driving while intoxicated.

2. **What does DUI stand for?**

Driving under the influence. Under §1312-B it is illegal for any person to drive while under the influence of intoxicating liquor or have a blood alcohol concentration of 0.08 or more.

3. **In terms of penalties, is being convicted of DWI more serious than being convicted of DUI?**

The Maine code does not distinguish between DWI and DUI.

4. **What are the penalties for being convicted of DWI? DUI?**

Under §1312-B the penalty for violation of the section is at least $300 in fines and 90 days suspension of a driver's license, permit, right to operate motor vehicle and right to apply for and obtain a license. The penalties stiffen if one had a previous conviction within 6 years to include a fine of at least $500, at least 7 days in jail, and suspension of driving privileges for 1 year. If one has two or more convictions within 6 years then the penalties include a fine of at least $750, at least 30 days in jail and suspension of license for 2 years. Also, the court can order the individual to participate in a Weekend Intervention Program.

5. **What is the penalty for refusing to submit to a breathalyzer test upon a police officer's reasonable request?**

Under §1312 any person who operates a motor vehicle upon the roads of Maine agrees to submit to a breath test. Failure to submit will lead to the revocation of the person's license and privilege to drive for 6 months to 3 years.

6. **What must a person's blood alcohol content (BAC) be before he/she is legally intoxicated.**

Under §1312-B if one's BAC is 0.08 or more s/he is legally intoxicated.

7. **The legal limit for blood alcohol is lower for persons under the legal drinking age of 21. True or False?**

False. Maine does not lower the BAC for persons under 21.

8. **An open container of alcohol can be in your car if you are 21 or over. True or False?**

False. Under 17 § 2003A possession of an open container, a container not having a cap, stopper or other in place, is evidence of violating the public drinking laws. A public place includes all roads or parking areas or roads designated primarily for vehicular traffic.

28 A § 2052 makes it illegal for minors to knowingly transport or permit liquor to be transported in a vehicle under the minor's control.

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Although the drinking age is 21 in all 50 states (meaning specifically that the sale of alcohol to minors is prohibited), the laws on teenage drinking vary from state to state. The laws vary in regard to whether they include prohibition of the purchase of alcohol, the attempt to purchase alcohol, the consumption of alcohol and the possession of alcohol. According to the **March 11, 1993 Safety Recommendation report of the National Transportation Safety Board,**

- Five states (DE, FL, MT, NH & NY) and the District of Columbia do not prohibit the purchase of alcohol by minors.
- West Virginia and the District of Columbia do not prohibit public possession of alcohol by minors.
- 23 states (AK, AR, DE, DC, FL, GA, RI, IL, IA, LA, ME, MD, MI, MS, MT, NV, NH, NY, SC, TX, UT, VT, VA) do not prohibit minors from attempting to purchase alcohol.
- 21 states (AR, CO, CT, FL, GA, HI, IA, KY, LA, MA, MS, MO, NE, NH, NM, NC, OR, SC, VT, WV, WY) do not prohibit alcohol consumption by minors.
- 16 states (AR, CA, CO, HI, KY, LA, ME, MI, NM, NY, NC, OK, SD, VA, WA, WY) do not prohibit minors from misrepresenting their age in order to purchase alcohol.
- 19 states (AL, AR, CO, DE, DC, IA, KS, LA, MD, MN, MT, NJ, OR, PA, SC, UT, VA, WA, WI) do not prohibit minors from presenting false ID to purchase alcohol.

In addition, most states do no prohibit minors from driving with alcohol in their blood unless their blood alcohol content reaches the adult legal limit, which is .10 percent in most states. Fifteen states, however, have amended their laws to lower for minors the permitted blood alcohol content while driving. These laws vary according to the age under which minors must be in order for the lower blood alcohol content to apply. Here is the layout for state laws on blood alcohol content for minors while driving:

0.00 BAC	0.01 BAC	0.02 BAC	0.04 BAC	0.05 BAC	0.06 BAC
AZ (<21)	NJ (<21)	ME (<21)	RI (<21)	CA (<18)	GA (<18)
NC (<19)		MD (<21)	NH (<21)	NM (<18)	
OR (<21)		OH (<18)			
UT (<21)		VT (<18)			
WI (<18)					

A number of states have tried to cut down on teenage driving accidents by implementing nighttime driving restrictions. The following states have some form of curfew for teenage driving:

ID: minors <16 can drive during the daytime only
IL: minors <17 cannot drive between 11pm-6am Mon-Thur and 12am-6am Fri-Sun
LA: minors <15 cannot drive between 11pm-6am Mon-Thur and 12am:6am Fri-Sun
MD: minors <16 cannot drive between 12am-5am
MA: minors <18 cannot drive between 1am-4am
NY: minors <18 cannot drive between 9pm-5am
PA: minors <18 cannot drive between 12am-5am
SD: minors <16 cannot drive between 8pm-6am.